IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1156 OF 2005

Ramesh Govind Tarvani ..Petitioner.

vs.

K.J.Somaiya College of
Engineering & anr. ..Respondent.

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Mr.Neel Helekar for the Petitioner.

Mr.A.K.Jadhav for Respondent No.1.

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CORAM : DR.D.Y.CHANDRACHUD, J.

3rd May, 2005.

P.C. :

1. The Petitioner has been dismissed from service on the ground of unauthorized absence from duty after the charges of misconduct contained in a charge-sheet dated 10th September, 2001 were held to have been proved. The Petitioner was absent from duty from 29th September, 2000. The order of termination has been upheld by the Presiding Officer of the Mumbai University and College Tribunal. The Tribunal has noted the provisions of

the rules known as the Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code (Terms and Conditions of Service of non-teaching Employees) Rules, 1984. Rule 41(13) inter alia provides that an employee shall not absent himself from duties, without first having obtained the permission of the Competent Authority. In the event that it is not possible for an employee to obtain such permission for reasons beyond his control, intimation has to be furnished to the Competent Authority within a period of three days from the first period of absence failing which, the employee would be liable to disciplinary action and the period of absence will be treated as leave without pay. Rule 42 enumerates acts and omissions which amount to misconduct and among them is any action of the employee contrary to the provisions of the rules. Under Rule 50 an employee who absents from duty without permission for a period of more than 30 days is deemed to be a deserter and his services stand automatically terminated on the expiry of the period of 30 days.

2. The Petitioner was absent from duty from 29th September, 2000 without permission. On 9th

October, 2000 he addressed a telegram seeking leave for a period of one week on the ground that he was suffering from Jaundice. This period of extension that was sought by the Petitioner expired on 6th October, 2000. On 20th October, 2000 the Petitioner sought the grant of sick leave for a further period of four weeks. The case papers which were submitted by the Petitioner showed that he had been admitted to the G.T.Hospital on 4th October, 2000 and had been discharged on the same day. Upon the receipt of the aforesaid communication on 4th November, 2000 an endorsement was made to the effect that the Petitioner may be directed to appear for a medical test at the medical college associated with the First Respondent management. A letter was accordingly addressed to the Petitioner on 6th November, 2000. On 9th November, 2000 the Petitioner addressed a communication for the grant of four weeks leave on the ground that he was suffering from Piles. On 15th December, 2000 the Petitioner appeared before the Medical Officer of the Hospital and he was certified fit to resume duties. Accordingly he should have resumed duties on 16th December, 2000, but he failed to do so. The defence of the

Petitioner in his statement of defence was that on 16th December, 2000 he was not allowed by the Principal to resume duties. The Presiding Officer of the Tribunal analysed this defence and rejected it. That was because on 15th March, 2001 the Petitioner had addressed a letter to the First Respondent claiming that when he had appeared before the Medical Officer on 15th December, 2000 he had fainted and according to the Petitioner he was advised to take rest. The Petitioner stated in his letter that he would be willing to reappear before the Medical Officer and to join duty after a fresh certificate of fitness was issued. The Presiding Officer has, therefore, correctly come to the conclusion that this would show that it was improbable that the Petitioner had approached the Principal on 16th December, 2000 for joining duty. If an incident had taken place on 16th December, 2000 in which the Petitioner had been prevented from joining duty, he would have immediately written a letter or given a notice to that effect. On the contrary, in the Petitioner's letter dated 15th March, 2001 there was no reference to the Petitioner having been prevented from joining duty. In these circumstances, the case of the Petitioner

has been correctly evaluated on the evidence. The Tribunal has noted that by his long and unauthorized absence the Petitioner has deserted his duty within the meaning of Rule 50 of the Standard Code.

3. The order of the Tribunal does not warrant any interference under Article 227 as it does not suffer from any infirmity. The petition is accordingly rejected.